

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANGEL GARCIA,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 07-5368
v.	:	
	:	
MATTHEW LEDDY,	:	
<u>et al.</u> ,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this day of , 2008, upon consideration of Defendants' Motion for Sanctions for Plaintiff's Failure to Attend his Deposition and to Compel Plaintiff's Appearance at his Deposition, it is hereby ORDERED that the Motion is Granted. It is ORDERED that (1) Angel Garcia shall pay the reasonable expenses, including attorney's fees and court reporter's costs, caused by the failure to attend his deposition; and (2) Angel Garcia shall submit to a deposition by defendants' counsel at the Law Offices of Deasey, Mahoney & Valentini, Ltd., 1601 Market Street, Suite 3400, Philadelphia, Pennsylvania, within seven days of this Order or face additional sanctions, including dismissal of his lawsuit.

BY THE COURT

Golden, J.

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<u>et al.</u> ,	:	
	:	
Defendants.	:	

**DEFENDANTS' MOTION FOR SANCTIONS FOR PLAINTIFF'S FAILURE TO
ATTEND HIS DEPOSITION AND TO COMPEL PLAINTIFF'S DEPOSITION**

Defendants Matthew Leddy, Marc Trembly, Edgar Mann, David Schofe, Brent Smith and Greg Macey (together "Defendants") hereby move for Sanctions for Plaintiff Angel Garcia's Failure to Attend his Deposition and to Compel Plaintiff's Appearance at his Deposition for the following reasons:

1. In this 42 U.S.C. § 1983 lawsuit, plaintiff alleges use of excessive force by Defendants in effecting his arrest.
2. On November 5, 2008, counsel for defendants commenced the deposition of Garcia at his attorney's office in Lancaster, Pennsylvania.
3. During the deposition, Garcia became upset and was not able to respond to questioning. All counsel agreed to take a short break in the deposition.
4. Upon resumption of the deposition, Garcia was still upset and not able to respond to questioning.

5. The parties agreed to postpone Garcia's deposition and to postpone depositions of defendants and further discovery until Garcia was able to resume his deposition.
6. Upon agreement of counsel, Garcia's deposition was scheduled to be resumed on November 21, 2008, at 10:30 a.m. at the offices of Garcia's attorney in Lancaster, Pennsylvania. See Notice of Deposition, attached hereto.
7. Counsel for all parties and the court reporter waited until 11:05 a.m. but Garcia failed to appear. Although earlier in the week Garcia had agreed to the time and location of the deposition, his counsel was not able to locate him on the morning of November 21.
8. As a courtesy to plaintiff, defendants' counsel, both of whom work in Philadelphia, had agreed to depose plaintiff at the offices of his attorney in Lancaster.
9. Fact discovery is scheduled to conclude on January 14, 2009.
10. Pursuant to Fed. R. Civ. P. 37(d)(1)(A)(i), defendants are entitled to sanctions against plaintiff for failure to attend his deposition after being served with proper notice. See Notice of Deposition, attached hereto.
11. Pursuant to Fed. R. Civ. P. 37(d)(3), defendants are entitled to have Angel Garcia pay the reasonable expenses, including attorney's fees and court reporter's costs, caused by the failure to attend his deposition.
12. Moreover, Defendants must be able to complete Garcia's deposition or they will be unable to prepare a competent and complete defense.
13. Counsel's certification is attached hereto pursuant to Fed. R. Civ. P. 37(d)(1)(B).

For these reasons, Defendants request that this Court grant this motion and order that (1) Angel Garcia shall pay the reasonable expenses, including attorney's fees and court reporter's costs, caused by the failure to attend his deposition; and (2) Angel Garcia shall submit to a deposition by defendants' counsel at the Law Offices of Deasey, Mahoney & Valentini, Ltd., 1601 Market Street, Suite 3400, Philadelphia, Pennsylvania, within seven days of this Order or face additional sanctions, including dismissal of his lawsuit.

THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

BY: s/s Barry N. Kramer
BARRY N. KRAMER
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s/s John Morgenstern
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Certification

Counsel for defendants hereby certify in good faith that the parties have conferred and that they are unable to resolve this discovery dispute. Garcia's counsel advised that Garcia had confirmed the time and location of his deposition for November 21 at 10:30 a.m. and that after Garcia failed to appear for his deposition his office was not able to locate Garcia for his deposition.

s/s Barry N. Kramer
Barry N. Kramer, Esquire

s/s John Morgenstern
John Morgenstern, Esquire

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CERTIFICATE OF SERVICE

I, Barry N. Kramer, hereby certify that defendants' Motion for Sanctions for Plaintiff's Failure to Attend his Deposition and to Compel Plaintiff's Deposition in the above-captioned matter has been filed electronically on November 24, 2008, and is available for viewing and downloading from the Court's Electronic Case Filing System ("ECF"). The ECF System's electronic service of the Notice of Electronic Case Filing constitutes service on all parties who have consented to electronic service:

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/s/ Barry N. Kramer
Barry N. Kramer